A. Loop Conditioning Charges Are Consistent with TELRIC and the 1996 Act

Despite the Commission's clear and repeated pronouncements that a conditioning charge complies with the 1996 Act and the Commission's pricing rules, some petitioners nevertheless repeat their earlier argument – with no new evidence or support – that CLECs should not be required to pay for loop conditioning because the charges represent "sunk costs" or "embedded costs," not forward-looking costs.[90]

That argument is simply wrong. Loop conditioning costs are not embedded, historical costs. Quite the contrary, the cost to modify the incumbent network is an actual, forward-looking cost that is incurred to change the incumbent's network, as it exists today, for the CLEC's benefit. There is nothing "historical" about it.

Moreover, requiring an incumbent to bear the costs of conditioning loops at the request of CLECs would clearly run afoul of the Eight Circuit's holding in *Iowa Utilities Board* that the Commission lacks the authority to impose superior-quality requirements. In its statement of issues to be raised in its petition for review of the *UNE Remand Order* in the D.C. Circuit, USTA has indicated its belief that the loop conditioning requirement itself violates section 251(d)(2). Irrespective of the merits of that argument, a requirement that an incumbent must condition the loop *for free* would certainly run afoul of the 1996 Act.[91] As the Eight Circuit explained, "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one."[92] Thus, at the very least, the Commission must

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[90] *See, e.g.*, Joint Petition for Reconsideration of @Link Networks, Inc., DSL.net, Inc., and MGC Communications, Inc. at 4 (FCC filed Feb. 17, 2000) ("Joint Petition"); Joint Petition for Reconsideration of Rhythms Netconnections Inc. and Covad Communications Company at 3-5 (FCC filed Jan. 21, 2000) ("Rhythms Petition"); MCI Reconsideration Petition at 15-17; Sprint Petition at 3-7; *see also* MCI Clarification Petition at 14-16 (arguing that states could conclude that the appropriate charge for loop conditioning is zero).

[91] *See* 47 U.S.C. § 251(c)(3).

[92] *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813 (emphasis added).

require CLECs to compensate incumbents for any changes incumbents make to their existing network solely at the CLEC's request. Indeed, even the vacated Rules 305(a)(4) and 311(c) that the Eighth Circuit struck down did not require incumbents to provide conditioned loops without compensation.

For these same reasons, the Commission should reject McLeod's petition for reconsideration. McLeod argues that incumbents should not be able to charge CLECs for the cost of "dis-integration" of the digital facility when CLECs request an unbundled loop for a customer who is served by an Integrated Digital Loop Carrier.[93] The construction costs of which McLeod complains are not embedded, historical costs but are, like loop conditioning charges, forward-looking costs that incumbents incur solely to provide the CLEC a loop that meets the CLEC's specifications. Thus, as with loop conditioning, the Commission's pricing rules and the Eighth Circuit's holding regarding superior access for CLECs dictate that these costs be borne by CLECs. Indeed, that is why the Commission held in the *Local Competition Order* that the costs of unbundling IDLC-delivered loops "will be recovered from requesting carriers" – another ruling that was not appealed at the time but is being collaterally attacked here.[94]

Moreover, the Commission has already recognized that, far from being an outdated technology as McLeod suggests, "[r]emote concentration devices, such as digital loop carrier (DLC) systems, are an efficient means of aggregating subscriber traffic on to common transmission facilities, usually fiber, for transmission from a remote terminal to the central office, rather than dedicating a separate transmission facility (*e.g.*, a copper loop) for each

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[93] Petition for Reconsideration of McLeodUSA Telecommunications Services, Inc. at 4 (FCC filed Feb. 17, 2000) ("McLeod Petition").

[94] *Local Competition Order*, 11 FCC Rcd at 15692-93, ¶ 384; *see also id.* at 15692, ¶ 382.

subscriber's traffic all the way from the customer's premises to the central office."[95] The Commission has touted integrated DLCs in particular: "The expanding deployment of digital end office switches has fostered the development and deployment of a new version of DLC, called Integrated Digital Loop Carrier ("IDLC"), which allows carriers to serve even more subscribers with fewer transmission paths. IDLC, which is generally deployed over fiber-optic cable, provides high-capacity transmission facilities closer to subscribers, so that these subscribers can use advanced telecommunications services."[96] Therefore, McLeod's claim that this technology would not be used in an efficient network is wrong.

B. The Commission Correctly Gives States the Authority to Allow ILECs To Recover Nonrecurring Conditioning Costs Through Nonrecurring Charges

Rhythms and others argue that, if the Commission continues to permit conditioning charges, it should find that state commissions need not permit ILECs to recover conditioning costs as nonrecurring charges.[97] In the *Local Competition Order*, the Commission clearly stated that "incumbent LECs' rates for interconnection and unbundled elements must recover costs in a manner that reflects the way they are incurred."[98] Thus, pursuant to this general rule, ILECs have a right to recover the nonrecurring costs of loop conditioning on a nonrecurring basis, and states do not have the authority to eliminate that right.

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[95] Memorandum Opinion and Order, and Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, 24085, ¶ 165 (1998) (internal citation omitted).

[96] Public Notice, *Common Carrier Bureau Solicits Comments on Proposed Modifications to ARMIS 43-07 Infrastructure Report*, 13 FCC Rcd 5083, ¶ 10 (1998).

[97] Rhythms Petition at 6-8; Joint Petition at 6; MCI Clarification Petition at 14-16.

[98] *Local Competition Order*, 11 FCC Rcd at 15874, ¶ 743; *see also* 47 C.F.R. § 51.507(a).

To be sure, incumbents have the option of voluntarily agreeing to alternative arrangements,[99] and SBC is willing to negotiate with CLECs regarding such arrangements. But any effort to mandate such stretching-out of cost recovery would do violence to the basic principles of efficient cost recovery that underlay the approach taken in the *Local Competition Order*.[100]

C. Loop Conditioning Charges Are Appropriate When Actually Incurred

Petitioners @Link, DSL.net, and MGC argue that, if the Commission does continue to require compensation for conditioning loops, "it should clarify that ILECs can only impose those charges where they are actually incurred."[101] If these petitioners mean to say that charges for items deemed to be UNEs must be cost-based, that is a rather obvious point that needs no clarification in light of the plain statutory language.[102] But if these petitioners are suggesting that state commissions may not approve conditioning prices that contain any form of averaging, their suggestion goes much too far. *Some* degree of averaging is necessary in any workable network pricing scheme. Thus, the Commission requires that UNE rates be deaveraged for three geographic zones, not set on a customer-by-customer basis.[103] In the same way, states may approve conditioning charges that reflect a reasonable approximation of costs, as opposed to the

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[99] Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, 20749, ¶ 395 (1997).

[100] First Report and Order, *Access Charge Reform*, 12 FCC Rcd 15982, 15989, ¶ 13 (1997) ("ensur[ing] that charges more accurately reflect the manner in which the costs are incurred, thereby facilitat[es] the movement to a competitive market."); *see also Local Competition Order*, 11 FCC Rcd at 15575, ¶ 150.

[101] Joint Petition at 6.

[102] *See* 47 U.S.C. § 252(d)(1).

[103] *See* 47 C.F.R. § 51.507(f).

precise costs for performing a particular type of conditioning, on a particular type of loop, at a particular address, during a particular time of day.[104]

IV. THE COMMISSION SHOULD REJECT RECONSIDERATION REQUESTS RELATED TO OPERATOR SERVICES AND DIRECTORY ASSISTANCE

AT&T, relying on the incorrect (and already rejected) premise that problems with customized routing impede CLECs' ability to use alternative OS/DA services, urges the Commission to "clarify," in four respects, the showing that incumbents must make to establish that customized routing is available before withdrawing OS/DA as an unbundled network element.[105] Specifically, AT&T asks the Commission to clarify that: (1) an ILEC may not withdraw OS/DA as a UNE until its customized routing has been "fully tested and accepted by the CLECs"; (2) disputes regarding the availability of customized routing should be referred to state commissions, and ILECs must continue to offer OS/DA as a UNE until such disputes are resolved; (3) ILECs must provide advanced notice of any discontinuation of OS/DA as a UNE and establish reasonable transition periods during which ILECs must continue to provide OS/DA at TELRIC rates; and (4) ILECs must not impose unreasonable demands that competing carriers establish collocation in every office where customized routing is requested.[106]

AT&T's request would not simply clarify the Commission's order, but rather stand it completely on its head. Instead of requiring ILECs to unbundle OS/DA services only in narrow

[104] In determining the costs for conditioning, states need not – and should not – "assum[e] that the ILEC will remove load coils from loops in groups of at least 25 at a time." Sprint Petition at 6-7. Rather, incumbents should be reimbursed for the charges actually incurred; CLECs should not receive a volume discount when they do not seek to have a bundle of loops conditioned.

[105] AT&T Petition at 21.

[106] *Id.* at 21-24.

circumstances, as the Commission intended,[107] AT&T would impose on ILECs a general obligation to unbundle OS/DA, unless and until they prove to AT&T's satisfaction that customized routing is available.

In the *UNE Remand Order*, the Commission specifically rejected AT&T's contention that problems or delays associated with implementing customized routing impede requesting carriers' ability to enter the market using non-ILEC OS/DA services,[108] and therefore that ILECs should be required to unbundle OS/DA services "[u]ntil customized routing solutions have been tested and broadly deployed."[109] The Commission found that the customized routing issues identified by AT&T "have been resolved," and that there are no "ongoing problems" with customized routing that might "create material delays when competing carriers purchase OS/DA service from alternative providers."[110] It therefore concluded that ILECs generally need not unbundle OS/DA services, except in the "limited circumstance" where an ILEC does not provide customized routing to requesting carriers that use unbundled switching.[111] Because AT&T's first three "clarifications" rest on a fundamental misinterpretation of the Commission's order, and the already-rejected premise that customized routing solutions are not generally available, they must be rejected.

AT&T's fourth clarification, that ILECs may not impose unreasonable terms on customized routing, likewise is based on an incorrect premise. AT&T claims that Ameritech

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[107] *UNE Remand Order* at Executive Summary ("Incumbent LECs are not required to unbundle their OS/DA services pursuant to section 251(c)(3), except *in the limited circumstance* where an incumbent LEC does not provide customized routing to a requesting carrier to allow it to route traffic to alternate OS/DA providers.") (emphasis added).

[108] *Id.* ¶ 462.

[109] *Id.* ¶ 462 n.924.

[110] *Id.* ¶ 462. AT&T itself is already utilizing customized routing extensively in SWBT's territory, further undermining any purported need for AT&T's proposed "clarifications."

[111] *Id.* ¶ 462 and Executive Summary.

requires requesting carriers and alternative OS/DA providers to collocate in every office in which customized routing is requested.[112] In fact, Ameritech now permits requesting carriers purchasing the UNE-P to utilize customized routing and new or existing Feature Group D trunks to route OS/DA traffic to their (or alternative providers') OS/DA platforms without obtaining collocation.[113] AT&T's fourth proposed "clarification" is without foundation and should be rejected.

Like AT&T, RCN simply regurgitates arguments already rejected by the Commission. In particular, RCN asserts that requesting carriers are impaired in their ability to provide competitive local exchange services to residential subscribers without unbundled access to ILEC OS/DA services because alternative OS/DA service providers may not be as familiar with local place names, or may have limited ability to connect to local public safety answering points (PSAPs) or operators in emergencies.[114] RCN concedes that CLECs can obtain OS/DA services from ILECs on a non-discriminatory basis under section 251(b)(3) (thus mitigating these concerns), but claims that CLECs cannot compete if they are forced to purchase ILEC OS/DA services at non-TELRIC rates under section 251(b)(3).[115]

The Commission has already considered and rejected each of these arguments. The Commission acknowledged that alternative providers of OS/DA services may be limited in their ability to connect to local PSAPs in emergencies, but concluded that the inability to connect

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[112] AT&T Petition at 23-24.

[113] In response to AT&T's February 17, 2000, request for information regarding OS/DA services associated with SBC/Ameritech's UNE-P offering, Ameritech notified AT&T of the availability of this option. *See* Electronic Mail Memorandum of Mike Kollmeyer to Shawn Murphy (Mar. 10, 2000), attached hereto as Exhibit A.

[114] Petition for Reconsideration of RCN Telecom Services, Inc. at 3-4 (FCC filed Feb. 17, 2000) ("RCN Petition").

[115] *Id.* at 5-6.

OS/DA calls to a PSAP does not impair the ability of a carrier to offer local exchange services.[116] In addition, it observed that a competitive carrier could obtain OS/DA and DA listings from the incumbent on a nondiscriminatory basis under section 251(b)(3), and thus connect its customers to PSAPs in the same manner as the incumbent.[117] And it rejected claims that differences in price between OS/DA as a UNE and OS/DA obtained from alternative sources (including self-provision, third parties, and from ILECs on a non-discriminatory basis under section 251(b)(3)) impair a requesting carrier's ability to provide local exchange and exchange access services.[118] Because RCN merely dredges up arguments that have already been considered at length and rejected on their merits by the Commission, its petition for reconsideration should be denied.

Finally, MCI argues that the Commission should reconsider its decision not to require ILECs to offer unbundled access to OS/DA databases.[119] It asserts that the Commission did not specifically consider whether CLECs would be impaired without unbundled access to OS/DA databases, as opposed to OS/DA services.[120] And it claims that permitting ILECs to charge non-TELRIC rates for OS/DA listings will harm consumers "by unreasonably raising the costs of competitors or otherwise impeding competitors."[121]

The Commission, once again, has already considered this issue and rejected claims that permitting ILECs to charge non-TELRIC rates for access to ILEC OS/DA databases and

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[116] *UNE Remand Order* ¶ 459. The Commission noted that not all ILECs, especially those with remote centers, can connect their own customers to every PSAP. *Id.* ¶ 460.

[117] *Id.* The Commission further noted that the only way a competitor can retain control over the quality of OS/DA service, and thus ensure that its customers can connect with every PSAP, is to self-provide its own OS/DA call center and train its own operators. *Id.*

[118] *Id.* ¶¶ 450-55.

[119] MCI Reconsideration Petition at 18.

[120] *Id.*

[121] *Id.* at 19.

subscriber listings would impair a requesting carrier's ability to offer service.[122] Indeed, the Commission specifically found that the costs associated with self-provisioning OS/DA, "includ[ing] . . . the cost of obtaining the underlying subscriber information contained in OS/DA databases . . . will not materially diminish a requesting carrier's ability to provide local exchange or exchange access service."[123] And it noted that CLECs' access to such databases and listings would be "on a *value added and nondiscriminatory basis* under section 251(b)(3) of the Act,"[124] not at TELRIC. Because MCI offers no credible basis for a different outcome on any of these issues, the Commission should reject MCI's petition for reconsideration[125] and reaffirm its conclusion that ILECs need not provide access to OS/DA services or databases on an unbundled basis.

V. THE COMMISSION SHOULD AFFIRM ITS DECISION NOT TO REQUIRE ILECS TO PROVIDE UNBUNDLED ACCESS TO AIN TRIGGERS

In the *UNE Remand Order*, the Commission rejected the request of Low Tech Designs, Inc. (Low Tech) to require ILECs: (1) to make AIN triggers and AIN trigger upgrades available to competitors on an unbundled basis, and (2) to mandate interconnection of CLEC-provided and other third-party AIN/SS7 service control points (SCPs) and intelligent peripherals to ILEC

[122] *UNE Remand Order* ¶¶ 455-57.

[123] *Id.* ¶ 450.

[124] *Id.* ¶ 455 (emphasis added).

[125] The Commission also should reject MCI's attempt to disparage SWBT's refusal to provide bulk listings to MCI. MCI Reconsideration Petition at 19. As is made clear in the electronic mail message, dated December 10, 1999, of Karen M. Moore of SWBT to Stuart H. Miller of MCI WorldCom, attached to MCI's Petition for Reconsideration as Attachment A, SWBT has offered to provide MCI bulk listings on a nondiscriminatory basis and at presumptively reasonable rates, consistent with the Commission's *SLI Order*, implementing section 251(b)(3). *See* Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, *Implementation of the Telecommunications Act of 1996*, 14 FCC Rcd 15550 (1999) ("*SLI Order*"). Nothing more is required.

signaling networks.[126] The Commission concluded that Low Tech had submitted insufficient evidence in the record to determine whether either of these requests was technically feasible.[127]

Low Tech now asks the Commission to reconsider this conclusion.[128] Low Tech's petition is devoid of any new evidence or other justification to support its request. Instead, Low Tech simply points to its previous comments in this docket, and urges the Commission to draw a different conclusion.[129] This will not do.

Moreover, granting Low Tech's request would pose significant risks to network security and reliability. AIN triggers are a component of the operating software of a central office switch and permit the proper routing of all calls handled by the switch. Allowing other providers to access directly AIN triggers could seriously impair a switch's coordination among network elements controlled by the operating software. AIN, for example, enables multiple calls to be re-routed on a real-time basis to account for shifting traffic volumes and patterns. Uncoordinated call-handling actions taken by interconnected carriers with direct access to AIN triggers could

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[126] *UNE Remand Order* ¶ 407.

[127] *Id.*

[128] Petition of Low Tech Designs, Inc. at 1 ("Low Tech Petition").

[129] *See* Low Tech Petition at 4 ("Low Tech has previously shown the Commission that Access to AIN triggers, along with AIN software creation/deployment capabilities, are both available today to *non-telecommunications carriers*, entities not capable of legally obtaining or providing local circuit switching capabilities.") (emphasis in original); *id.* at 5 n.9 (citing Comments of Low Tech, Inc. at 5-6 (FCC filed May 26, 1999) ("Low Tech Comments")); *id.* at 7 n.12 (citing Low Tech Comments at 8-9). Low Tech criticizes the Commission for not taking into account decisions by the Illinois and Georgia commissions that, according to Low Tech, required SCP interconnection and third party access to AIN triggers after a finding of technical feasibility. Low Tech Petition at 8, 10. However, as Low Tech acknowledges, the Commission specifically considered the Illinois decision in concluding there was insufficient evidence to find that interconnecting third party AIN SCP databases to the ILEC's signaling system is technically feasible. Low Tech Petition at 8, 10-11. *See also Local Competition Order*, 11 FCC Rcd at 15750-51, ¶ 502. Moreover, the Illinois Commission's decision did not address the network reliability issues associated with unbundled access to AIN triggers, which are an integral part of any technical feasibility analysis. *See* Order, *AT&T Communications of Illinois, Inc.*, Nos. 95-0458 & 95-0531, at 47 (Ill. Commerce Comm'n June 26, 1996) (Low Tech Petition, Attachment A) ("The Commission requests that Ameritech and Centel address the possible risks to the network and incorporate the appropriate remedies to prevent any harm."). In addition, as in its initial comments, Low Tech fails to provide any citation of the Georgia Commission's decision in its petition. *See* Low Tech Comments at 13 n.13 (asserting that several state commissions, including Georgia and Illinois, have provided for third-party SCP interconnection, but failing to provide a citation of those decisions).

result in conflicting software instructions to control and balance rapidly-changing traffic patterns. In addition, a single interconnected carrier's inability to handle or receive calls could result in the termination, based on AIN triggers, of calls that involve another service providers' use of the same triggers, or in the re-routing of calls placed by customers of another carrier.

Permitting multiple third parties to access AIN triggers also could result in network failures due to the interaction of such parties' AIN features and services. For example, if one provider used a trigger to treat all calls to a given NPA-NXX in a specific manner (*e.g.*, routing to a particular IXC) and another provider used the same trigger to treat calls to a specific telephone number within that NPA-NXX in a different manner (*e.g.*, forwarding them to a service platform located elsewhere), calls placed by customers of both carriers could reach unexpected destinations and services. Even assuming that service-by-service coordination was possible among multiple providers with direct trigger access, the impact of new features introduced by any one carrier could not be predicted with certainty.

In addition, the use of AIN triggers involves the real-time transmission of information relating to call progress and duration, as well as customer feature complement, line status, and configuration. This information constitutes Customer Proprietary Network Information ("CPNI"), which is defined as "information related to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service...."[130] Existing switches do not permit an ILEC to limit a particular carrier's access to the CPNI of other carriers' customers. As a consequence, providing direct access to AIN triggers would preclude compliance with the Act's requirement that carriers safeguard the CPNI of its customers and those of other carriers.

[130] 47 U.S.C. § 222(f)(1)(A).

Finally, many AIN applications are capable of changing billing parameters, which provide for the proper assignment of charges for a given call. Since existing switches do not provide for verification of the accuracy of such billing information, unauthorized alterations of billing parameters could not be detected or prevented.

Requiring ILECs to provide unbundled access to AIN triggers and to permit CLECs to connect their own SCPs and AIN peripherals to the ILEC's signaling network therefore is not feasible without posing a significant risk to network security, reliability, and customers' privacy rights. Accordingly, the Commission should reject Low Tech's petition.

VI. THE COMMISSION SHOULD REJECT ATTEMPTS BY PETITIONERS TO BYPASS THE EIGHTH CIRCUIT'S REVIEW OF RULES 315(c)-(f)

In *Iowa Utilities Board*, the Eighth Circuit vacated sections 51.315(c)-(f) of the Commission's rules, which required ILECs to combine network elements that are not already combined. Although the Commission did not appeal that decision, it has asked the Eighth Circuit to review whether those rules should be reinstated in light of the Supreme Court's decision. Given this pending review by the Eighth Circuit, the Commission in the *UNE Remand Order*: (1) declined to find the EEL as a separate network element; [131] and (2) declined to address whether section 315(b) of the Commission's rules requires ILECs to combine network elements that are "normally" combined.[132]

Ignoring the fact that Rules 315(c)-(f) remain vacated, CompTel, MCI, and Sprint ask the Commission to reconsider both of these decisions.[133] These parties present no new evidence or arguments in support of their requests. They simply ask the Commission to disregard the Eighth

[131] *UNE Remand Order* ¶ 478.

[132] *Id.* ¶ 479.

[133] *See, e.g.*, CompTel Petition at 10-14, Sprint Petition at 15; MCI Clarification Petition at 6-9.

Circuit's mandate vacating these rules. But the Commission was right to reject these requests in the *UNE Remand Order* and should do so again.

The basis for the Commission's decision to decline to require the EEL is self-evident. By definition, the EEL is loop/transport combination that does not now exist. Therefore, unless and until the Eighth Circuit reinstates Rules 315(c)-(f), ILECs cannot be required to provide the EEL.

Certain petitioners nevertheless claim that the Commission may require the EEL without relying on Rules 315(c)-(f). They claim that the Commission is free to conclude under Rule 315(b) that incumbents must offer combinations of network elements that are not already combined as long as they would "ordinarily" be combined. This argument contradicts both the plain language of the Commission's rules and the language of the Supreme Court in *Iowa Utilities Board.*

Rule 315(b) provides that "an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines."[134] Thus, Rule 315(b), by its express terms, governs elements that are already actually combined and prevents incumbents from taking the affirmative step of separating them. Vacated Rule 315(c), however, required new combinations "*even if* those elements are not ordinarily combined." It thus covered the situation where elements are not already combined, whether they are ordinarily combined or not. Petitioners' arguments that Rule 315(b) addresses a situation covered by Rule 315(c) – where elements of types that are ordinarily combined are not in fact combined – would make Rule 315(b) redundant of Rule 315(c) and render the "even if" clause of Rule 315(c) meaningless.

The Supreme Court affirmed what the plain language of Rule 315(b) makes clear, stating that "Rule 315(b) forbids an incumbent to separate *already*-combined network elements before

[134] 47 C.F.R. § 51.315(b).

leasing them to a competitor."[135] The Court, therefore, understood Rule 315(b) to govern only those elements currently and actually combined – not those "ordinarily" combined. Indeed, the Court stated that, "[a]s the Commission explains, [Rule 315(b)] is aimed at preventing incumbent LECs from 'disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants.'"[136] This rationale for the rule underscores that Rule 315(b) governs those elements that have been "previously connected" and addresses the "wasteful" act of separating them, not elements that have yet to be combined.

The Commission has recognized all this before the Eighth Circuit, noting that Rule 315(b) "prohibited an incumbent LEC from separating *already-combined* network elements against the new entrant's wishes."[137] Indeed, there would be no point in the Commission's pending request for reinstatement of vacated Rule 315(c) if Rule 315(b) could be read to allow the same thing.

Petitioners are also mistaken when they suggest that the Commission can conclude that, "[i]f even one UNE in a combination satisfies the 'impair' standard, the entire UNE combination must be offered by ILECs on a mandatory basis under Section 251(c)(3)."[138] The Supreme Court relied on the fact that each element would be considered individually under the "impair" standard, stating that removal of some elements from the list of unbundled network elements could "render the incumbents' concern [regarding UNE combinations under Rule 315(b)]

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[135] *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. at 736-37 (emphasis added).

[136] *Id.* at 737.

[137] Brief for Respondents at 80, *Iowa Utilities Board v. FCC*, No. 96-3321 (8th Cir. filed Aug. 16, 1999) (emphasis added).

[138] CompTel Petition at 13.

academic."[139] Similarly, the Supreme Court stated that the all-elements rule "may be largely academic in light of our disposition of Rule 319. If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network."[140] The Court therefore assumed that the Commission would evaluate each element independently under section 251(d)(2). If an element fails to satisfy section 251(d)(2) on its own, it need not be unbundled – either alone or in combination with other elements. To accept CompTel's argument, then, would be to flout the Supreme Court's analysis.

VII. THE COMMISSION SHOULD REJECT PROPOSED CHANGES TO THE *SUPPLEMENTAL ORDER*

Repeating its arguments from the Special Access proceeding, CompTel argues that all use restrictions are unlawful.[141] In its comments in response to the *Fourth FNPRM*, SBC shows this argument to be wrong. SBC also demonstrates that the Commission may prevent special access arbitrage even without establishing a use restriction. SBC refers the Commission to those arguments[142] but notes that a reconsideration petition is not the proper forum for deciding the very question that is being considered under the *Fourth Notice of Proposed Rulemaking* and *Supplemental Order*.[143]

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[139] *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. at 737.

[140] *Id.* at 736.

[141] *Compare* CompTel Petition at 14-17 *with* Comments of the Competitive Telecommunications Association (FCC filed Jan. 19, 2000).

[142] *See* Comments of SBC Communications Inc. (FCC filed Jan. 19, 2000); Reply Comments of SBC Communications Inc. (FCC filed Feb. 18, 2000) ("SBC Special Access Reply Comments").

[143] *See, e.g., UNE Remand Order* ¶ 201 ("We decline, at this time, to identify loop spectrum as a separate unbundled network element. In the *Advanced Services First Report and Order and FNPRM*, we will consider whether the high-frequency spectrum of the loop qualifies as an unbundled network element and the operational issues associated with such unbundling. We believe that the record developed in that proceeding more fully addresses the issues associated with spectrum unbundling, and we therefore decline to address those issues in this proceeding.") (citation omitted); *id.* ¶ 437 ("We decline to adopt performance standards in this proceeding. . . . [M]ore appropriate forums exist for the

MCI argues that "[n]ow that CLECs have the right to purchase UNE-EELs, ILECs are attempting to impose unlawful restrictions on CLEC access to UNE-EELs."[144] It complains, in particular, that Bell Atlantic will not permit it to commingle local interconnection or access traffic with UNE traffic on the same facility and that Bell Atlantic will not convert special access services to UNEs unless those special access facilities terminate in a collocation space.[145] It asks the Commission to "clarify" that these practices are unlawful.

This request for clarification should be rejected because the two practices of which MCI complains are, in fact, fully consistent with the Commission's requirements. Fundamentally, MCI's contention that it should be able, through commingling, to convert particular channels of a DS-1 or DS-3 facility to UNEs even if the entire facility does not qualify for conversion runs afoul of the Commission's rules in at least two respects. First, it suggests a novel form of line sharing that has never been ordered. The Commission has required ILECs to provide unbundled access to loops and transport facilities, including DS-1s and DS-3s; it has never required ILECs to provide unbundled access to individual channels on those facilities. Yet that is precisely what MCI seeks by way of "clarification." Second, MCI's request would defeat the purpose of the *Supplemental Order*. In that order, the Commission established a test for determining when interexchange carriers ("IXCs"), such as MCI, may convert special access facilities to UNEs. The Commission held that, pending resolution of the Fourth FNPRM, IXCs may not convert special access facilities to UNEs unless the "IXC uses combinations of unbundled loop and

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resolution of specific allegations of noncompliance with our unbundling rules."); *Local Competition Order*, 11 FCC Rcd at 15657-58, ¶ 311 ("We decline to address whether the Commission should consider any of the terms and conditions adopted here in evaluating BOC applications to provide in-region long distance services. We will consider this issue, as it arises, when we evaluate individual BOC applications."); *id.* at 16121, ¶ 1268 ("We decline to adopt rules regarding section 706 in this proceeding. We intend to address issues related to section 706 in a separate proceeding.").

[144] MCI Clarification Petition at 23-24.

[145] *Id.* at 25.

transport network elements to provide a significant amount of local exchange service."[146] In establishing this test, the Commission's stated intent was to "preserve the special access issue."[147] MCI's request, however, would open the floodgates to special access conversions. In order to obtain lower rates, MCI would merely have to demonstrate that a particular circuit on a special access facility meets the local traffic threshold. It would not matter if the rest of the facility was used exclusively for interexchange traffic; MCI would quality for a pro-rated reduction. That result could not possibly be squared with the language or intent of the *Supplemental Order*. Indeed, in elaborating on what constitutes a "significant amount of local exchange service," the *Supplemental Order* cites with approval a September 2, 1999, *ex parte* filed by Bell Atlantic and several CLECs.[148] That *ex parte* only permits a DS-1 or above special access facility to be converted to UNEs when the facility as a whole meets certain local traffic thresholds. Indeed, it provides specifically that "[w]hen loop/transport combinations include multiplexing (DS-1 multiplexed to DS-3 level), each of the individual DS-1 circuits must meet the above criteria."[149] MCI's requested clarification, therefore, cannot possibly be reconciled with existing ILEC loop and transport unbundling requirements or the *Supplemental Order*.

MCI's request that the Commission clarify that loop/transport combinations need not terminate in a collocation space fares no better. Both the *UNE Remand Order* and the *Supplemental Order* made clear that ILECs need only convert to UNEs qualifying loop/transport combinations that terminate in a collocation space. In paragraph 486 of the *UNE Remand Order*,

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[146] *Supplemental Order* ¶ 5.

[147] *Id.* at ¶ 4.

[148] *Id.* at n.9.

[149] *See Ex Parte* Letter from Edward D. Young, III, Senior Vice President and Deputy General Counsel, Bell Atlantic, *et al.*, to Chairman William E. Kennard and Commissioners, Federal Communications Commission, CC Docket No. 96-98 (FCC filed Sept. 2, 1999).

the Commission squarely held that carriers may obtain combinations of network elements only when those combinations terminate in a collocation space: "Any requesting carrier that is collocated in a serving wire center is free to order loops and transport to that serving wire center as unbundled network elements." In the *Supplemental Order*, the Commission further restricted the availability of loop/transport combination UNEs. Pointing expressly to ILEC arguments that "paragraph 486 allows collocated IXCs that self-provision entrance facilities (or obtain them from third parties) to convert the remaining portions of their special access circuits to unbundled network elements, even though the IXCs are not using the facilities to provide local exchange service, the Commission found that the *UNE Remand Order* did not adequately preserve the status quo pending resolution of the Fourth Further Notice of Proposed Rulemaking. To strengthen the protections given in the *UNE Remand Order*, the Commission added a local service requirement for UNE combinations. Specifically, it held that loop/transport combinations may not be converted to UNEs unless those combinations are used to provide a significant amount of local exchange service. The Commission in no way suggested that, in adding this local service requirement, it was simultaneously removing its requirement that loop/transport combinations terminate in a collocation space. To the contrary, in elaborating on what constitutes a "significant amount of local exchange service," the Commission cited with approval the September 2 joint *ex parte*, which specifically included a collocation requirement.

MCI's claim that loop/transport combinations need not terminate in a collocation space is not only inconsistent with the Commission's orders, but also constitutes a re-definition of the EEL. The Commission has always recognized that an EEL terminates in a collocation space. For example, in concluding that CLECs are not impaired in their ability to use their own switches to serve certain customers in certain areas when the EEL is available, the Commission

stated: "If the EEL is available and a requesting carrier seeks to serve a high volume business, the incumbent LEC can provision the high capacity loop and connect directly to a requesting carrier's collocation cage."[150]

Indeed, the CLECs themselves have recognized that the EEL terminates in a collocation space. When parties initially requested the EEL, the driving logic behind the request was that it would enable them to collocate in fewer central offices, not that it would enable them to avoid collocation all together. As stated by CompTel, for example:

> Using the Extended Loop, CLECs may provide service to distant customers without having to incur the costs, delays, and problems associated with trying to collocate in every central office necessary to serve those distant customers. The Extended Loop enables switch-based CLECs an economic means of serving some customers *beyond the central offices in which they are collocated.* [151]

Similarly, Net2000 argued that "CLECs need combinations, like the EEL, to maximize the number of customers that may be reached with a single collocation arrangement."[152] KMC noted that "[a]n extended link permits a new entrant to collocate in a single Central Office and provide service to customers attached to this Central Office and other outlying Central Offices."[153] And AT&T reasoned that, "[i]f incumbent LEC's refuse to combine elements and thus refuse to permit CLECs to purchase EELs, however, CLECs that provide their own switching would have to collocate in *every* central office serving a customer."[154] Thus, it is clear from CLECs' own

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[150] *UNE Remand Order* ¶ 298. *See also id.* ¶ 486 ("any requesting carrier *that is collocated in a serving wire center* is free to order loops and transport to that serving wire center as unbundled network elements") (emphasis added); *id.* ¶ 487 ("in situations where the requesting carrier *is collocated* and has self-provisioned transport or obtained transport from an alternative provider, but is purchasing unbundled loops, that carrier may provide only exchange access over those facilities") (emphasis added).

[151] *See, e.g.*, Comments of the Competitive Telecommunications Association at 51-52 (FCC filed May 26, 1999) (emphasis added).

[152] Comments of Net2000 Communications, Inc. at 21 (FCC filed May 26, 1999).

[153] Comments of KMC Telecom Inc. at 25 (FCC filed May 26, 1999).

[154] AT&T UNE Remand Comments at 137; *see also* Comments of the Association of the Local Telecommunications Services at 66 (FCC filed May 26, 1999) ("Unbundled extended links would help alleviate the competitive disparity

comments that the rationale for EELs is to reduce the need to collocate in multiple central offices, not to eliminate the collocation requirement outright.

VIII. THE COMMISSION'S UNBUNDLING RULES FOR LOOPS AND DARK FIBER DO NOT REQUIRE CLARIFICATION OR RECONSIDERATION

A. The Commission Should Not Modify Its Definition of the Loop Network Element

AT&T asks the Commission to "clarify that when a CLEC purchases an unbundled loop, the incumbent may not, absent the CLEC's request, remove any of the incumbent LEC's equipment attached to that loop, including equipment that is used for loop termination, interfacing with inside wire, or providing other essential services."[155] The Commission, however, has already made clear what should be defined as part of the loop element: "all features, functions, and capabilities of the transmission facilities, including dark fiber and attached electronics (except those used for the provision of advanced services, such as DSLAMs)."[156] AT&T's proposed further "clarification" appears in fact to be an attempt to undercut the Commission's decision not to unbundle advanced service equipment. Under AT&T's proposal, attached electronics, even those used for advanced services that are not part of

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created by the ILECs' ubiquitous network infrastructure, by maximizing the number of customers that can be served from a single CLEC point of presence. . . . Unless ILECs are required to provide unbundled access to extended links, CLECs will be forced to collocate in every end office, materially increasing the cost of interconnection, materially limiting the scope of availability of CLEC services, and materially delaying CLECs' time-to-market."); Comments of the Competitive Telecommunications Association at 51 (FCC filed May 26, 1999) ("Using the Extended Loop, CLECs may provide service to distant customers without having to incur the costs, delays, and problems associated with trying to collocate in *every* central office necessary to serve those distant customers.") (emphasis added); Comments of McLeodUSA Telecommunications Services, Inc. at 8 (FCC filed May 26, 1999) ('The need for *additional* collocation arrangements, and thus the opportunity for additional delays, can be reduced if extended links are made available.") (emphasis added); Comments of RCN Telecom Services, Inc. at 24 (FCC filed May 26, 1999)("A new entrants' ability to provide services, especially residential service, will be significantly impaired without access to extended links because it is not economically feasible to collocate in *all* ILEC central offices, particularly those in outlying areas of lower population density.") (emphasis added; footnote omitted).

[155] AT&T Petition at 19.

[156] *UNE Remand Order* ¶ 167.

the loop, could not be removed absent a CLEC's request because it is "equipment attached to that loop." As discussed above, the Commission expressly rejected arguments that DSLAMs and other advanced services equipment should be unbundled, and there is no legal or factual basis for adopting a different rule either directly or indirectly. Moreover, AT&T's request for further Commission intervention is premature, as AT&T has provided no evidence that the negotiation and arbitration process will not effectively determine what particular attachments meet the Commission's new definition of the loop network element.

Similarly, MCI has offered no evidence to support its claim that the Commission should implement additional rules identifying information about subloop unbundling that incumbents must give CLECs.[157] Again, this issue is properly addressed through negotiation and arbitration in the first instance, and MCI has offered no justification for the Commission to short-circuit such implementation of Commission rules at the state level.

B. The Commission Should Not Modify the Terms for Providing Dark Fiber

MGC Communications asks the Commission to conclude that incumbents must make existing dark fiber facilities available on a first-come, first-served basis and to forbid incumbents from reserving dark fiber for future use.[158] Although MGC acknowledges that in some circumstances it is appropriate for incumbents to reserve UNEs, including dark fiber, for future use, MGC requests that the Commission prohibit reservations longer than six months.[159] Finally, MGC proposes that incumbents should be disallowed from reserving more than 25 percent of its dark fiber.

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[157] MCI Reconsideration Petition at 24.

[158] Petition for Clarification and Reconsideration of MGC Communications, Inc. at 4 (FCC filed Feb. 17, 2000).

[159] *Id.* at 5.

Once again, the negotiation and arbitration process is the proper starting point for developing terms and conditions related to providing dark fiber. SBC, for example, already has interconnection agreements that address prioritization of competing demands on dark fiber. For example, SWBT's interconnection agreement with Waller Creek in Texas states that "[i]f either party wishes to lease fiber which is currently being utilized by the other party at a level of transmission less than OC-12, that party may assume use of the fiber at a minimum OC-12 level."[160] Similarly, SWBT's interconnection agreement with AT&T in Texas provides that, "[i]f SWBT can demonstrate within a twelve (12) month period after the date of a dark fiber lease that the LSP is using the leased dark fiber capacity at a level of transmission less than OC-12, . . . SWBT may revoke the lease agreement with an LSP."[161] And SWBT's Texas 271 Agreement and its interconnection agreement with AT&T in Texas both provide that "[a]n LSP, including CLEC, may not, in a twenty-four (24) month period, lease more than 25% of SWBT's excess dark fiber capacity in a particular feeder segment."[162] Such provisions are, of course, generally available under section 252(i).

In short, MGC has utterly failed to demonstrate that there is any special need for the Commission to intervene in the arbitration and negotiation process and set the terms and conditions for dark fiber provision.

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[160] Interconnection Agreement – Texas Between Southwestern Bell Tel. Co. and Waller Creek Communications Inc. App. 6, § 3.1 (Tex. PUC filed June 2, 1998).

[161] Interconnection Agreement – Texas Between Southwestern Bell Tel. Co. and AT&T Communications of the Southwest, Inc. Attachment UNE-TX, § 4.6.2 (Tex. PUC filed Oct. 4, 1999).

[162] *Id.*; *see also id.* § 8.2.2.1. These restrictions – as opposed to a first come, first served rule – "remove the possibility that any individual CLEC could shut out other CLEC's by leasing all of SWBT's available dark fiber." Revised Arbitration Award in Response to Motion for Order Nunc Pro Tunc on Post Interconnection Disputes, Docket Nos. 17922 & 20268 (Tex. PUC June 22, 1999).

CONCLUSION

For the foregoing reasons, the petitions for reconsideration and clarification raising the arguments discussed above should be denied.

Respectfully submitted,

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March 22, 2000

A M E R I T E C H Doc No: 037129

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Date: 10-Mar-2000 04:50pm CST
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TO: Internet - SHAWN MURPHY (smurfs@att.com@SMTP)

CC: Paul Monti (MONTI,PAUL@A1IL.AMERITECH.COM@SMTP)

Subject: OS/DA Information

Mr. Murphy,

I am responding to your Feb. 17, 2000 regarding OS/DA services associated with SBC/Ameritech's UNE-P offering. Paul Monti asked me to get back to you. There are a number of ways of providing OS/DA and SBC/Ameritech is exploring new offerings to give CLECs as much flexibility as possible with regarding to ordering UNE-P. One of the new offerings utilizes Feature Group D trunking and does not require collocation. Here is a current list of options regarding OS/DA.

1. Ameritech will provide Ameritech Branded OS/DA as part of the UNE-P offering unless the TC informs Ameritech otherwise and provisions Customer Routing for OS/DA. This offering will be billed at the OS/DA market-based rate contained in the CLEC's interconnection agreement. If the agreement does not contain OS/DA rates, then an amendment to the agreement will have to be initiated. If this option is chosen, no further action is required.

2. The TC can choose to utilize new or existing Access FGD trunks. Utilizing a distinct line class code, the calls would be routed to the TC/IXC Access FGD trunks port, or to a ULS DS1 trunk port. Under this option it is assumed the TC is utilizing another party to provide OS/DA. All applicable Access port, transport, and usage charges for the FGD trunk would apply. Access to the Ameritech OS/DA platfrom is not available with FGD routing. The TC must follow the Line Class Code (LCC) ordering rules contained in the ULS ordering guide. Branding is not an issue with this option since this option routes to another OS/DA provider.

3. The third option utilizes custom routing. The ordering requirements for this option are detailed in the OS/DA section of the Unbundled Elements Ordering Guide on TCNET. Under this option the TC is required to have a separate trunk group to each NPA they serve. These trunks must originate from the end office (s) and from a network facility collocation point if the CLEC is utilizing ULS Custom routing and their own transport. This option allows TCs to utilize Ameritech for OS/DA

or to send the calls to their own provider. The terms and conditions (including signaling requirements) and applicable charges for trunk port utilization will apply. The TC must follow the LCC ordering rules contained in the ULS ordering guide. Branding can be requested through the BFR process if Ameritech is the OS/DA provider. See TCNET (Unbundled Elements Ordering Guide) for addition detail. This option would also require an amendment to the interconneciton agreement if the TC's current agreement does not have rates for OS/DA.

If you have any additional questions please respond in writing so that we can address your concerns with the appropriate Ameritech/SBC resources. Please feel free to call me to discuss some of the details 262-523-7020.

Mike Kollmeyer
Account Manager

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March, 2000, I caused copies of SBC's Request for Leave To File a Consolidated Opposition to Petitions for Reconsideration and Clarification and To Exceed Page Limits, and SBC's Consolidated Opposition to Petitions for Reconsideration and Clarification, to be served upon the parties listed on the attached service list by hand delivery (indicated by asterisk) or by first-class mail, postage prepaid.

Michelle R. Dawson

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